

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
RAJ L. DEFREITAS	:	SMALL CLAIMS
	:	DETERMINATION
	:	DTA NO. 820364
for Redetermination of a Deficiency or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Year 2002.	:	

Petitioner, Raj L. Defreitas, 86-13 89th Street, Woodhaven, New York 11421, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2002.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on January 12, 2006 at 10:45 A.M. Petitioner appeared by Williesteina Jacobs. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Susan Parker).

Since neither party reserved time to submit a post hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claimed earned income credit of \$1,139.00 on the basis that she failed to substantiate that she had actually earned the \$11,300.00 of self-employed business income as reported on her 2002 New York State resident income tax return.

FINDINGS OF FACT

1. On or before February 7, 2003, petitioner herein, Raj L. Defreitas, electronically filed with the Division of Taxation (“Division”) her New York State and City resident personal income tax return for the 2002 tax year. On the return, petitioner claimed head of household filing status and two dependent exemptions, one for her daughter born in 1987 and the second for her son born in 1989.

2. Petitioner’s 2002 tax return reported New York adjusted gross income of \$4,101.00, which amount consisted of wages of \$70.00; interest income of \$167.00; business income of \$11,300.00; short term capital loss of \$1,714.00; rental loss of \$4,923.00 and a \$799.00 adjustment to income for one-half of her Federal self-employment tax. After subtracting \$10,500.00 for the standard deduction and \$2,000.00 for two dependent exemptions, there remained no taxable income and thus no State or City tax due. Petitioner’s return claimed a refund of \$1,202.00, which amount included \$1,139.00 for the New York State earned income credit and \$63.00 for the City of New York school tax credit.

3. Petitioner’s Federal Schedule C-EZ, Profit or Loss from Business, reported the following income and expenses:

ITEM	AMOUNT
Gross receipts from business	\$13,800.00
Total expenses	-2,500.00
Net profit from business	\$11,300.00

4. The Division, in order to verify that petitioner was entitled to the \$1,139.00 earned income credit, requested, pursuant to a letter dated February 7, 2003, that petitioner substantiate both her reported business income and that she had two qualifying dependents. Although

petitioner responded to the Division's request for information, the Division found such response inadequate to prove her receipt of earned income during the 2002 tax year.¹ Accordingly, on October 10, 2003, the Division sent a Notice of Disallowance to petitioner advising her that the New York State earned income credit of \$1,139.00 as claimed on her 2002 income tax return was denied.²

5. In 1990 petitioner successfully completed an approved 95-hour training program and received her certification as a home health aide. The \$13,800.00 of gross receipts reported by petitioner on her 2002 Federal Schedule C-EZ represents the payments she allegedly received as a self-employed home health aide from two individuals, Agatha Guarino and Donald Strong. To substantiate the amount she received from Ms. Guarino, petitioner submitted a photocopy of a handwritten one-page document entitled "Schedule of Accounts Receivable." The Schedule of Accounts Receivable contained 47 entries, one for each of the 47 consecutive weekly periods ending January 3, 2002 through November 28, 2002, listed Agatha Guarino's name in the name column and reflected a weekly payment of \$200.00 in the amount column. One check, dated September 11, 2002 and drawn on the joint account of Jean Guarino³ and Agatha L. Guarino, was also submitted in evidence. This check, made payable to petitioner, was for the sum of \$100.00 and contained the entry "caretaker" in the memo section. The amount column of the Schedule of Accounts Receivable originally contained a \$200.00 entry for the weekly period ending September 11, 2002; however, this amount was changed to read \$100.00, apparently to be consistent with the one check which was submitted in evidence. The record also contains a

¹ The Division concedes that petitioner had two qualifying children for earned income credit purposes.

² On April 28, 2003, the Division refunded to petitioner the \$63.00 New York City school tax credit and therefore this amount is not in dispute in this proceeding.

³ Jean Guarino is Agatha Guarino's sister-in-law.

handwritten statement⁴ signed by Agatha Guarino indicating that petitioner “was in my personal employ for the time period of January through November of 2002, at which she was paid \$200.00 weekly.” The Division’s records reflect that the only income reported on Agatha Guarino’s 2002 tax return was a taxable pension in an amount slightly greater than the amount purportedly paid to petitioner.

6. To substantiate the payments she received from Mr. Strong, petitioner submitted an undated and unsigned typewritten statement containing Mr. Strong’s name and address. The statement indicated that petitioner has “been cleaning my apartment two times a week since February 2002 until this present time. Ms. Defreitas is paid \$100.00 cash every week and she is responsible for paying her own taxes.” The Division’s records show that Mr. Strong last filed a tax return in 1992.

SUMMARY OF THE PARTIES’ POSITIONS

7. The Division argues that, with the exception of the one check dated September 11, 2002, the documentary evidence adduced by petitioner to substantiate her earned income consists of self-serving statements which should be accorded little or no weight. The Division maintains that a self-employed individual is required to keep books, records, receipts and documents in a format and in a quantity sufficient to clearly show how much was earned and what the expenses were. The Division also asserts that petitioner had absolutely no evidence to substantiate any of the \$2,500.00 of claimed business expenses. In summary, the Division believes that the evidence presented to support the amount of petitioner’s claimed business income falls far short of constituting adequate books and records.

⁴ It is clear that the statement was prepared by someone other than Agatha Guarino since a comparison of her signature and the body of the statement reveals that the handwriting is vastly different.

8. Petitioner asserts that her credible testimony, coupled with the documentary evidence submitted, is sufficient to prove that she had \$11,300.00 of net business income during the 2002 tax year from her activities as a self-employed home health aide. Petitioner maintains that it is immaterial whether or not Ms. Guarino or Mr. Strong had reported taxable income in amounts sufficient to cover the sums paid to her for her services and that this is not a relevant factor in the determination of her earned income for the 2002 tax year.

CONCLUSIONS OF LAW

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2002 tax year is equal to twenty-seven and one-half percent “of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . .” Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (“IRC”) and Federal case law to determine petitioner’s eligibility for the earned income credit.

B. The Federal earned income credit, provided for pursuant to IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer’s “earned income” which includes, *inter alia*, wage income and earnings from self-employment (IRC § 32[c][2]). Since the Division has conceded that petitioner had two qualifying children for earned income credit purposes, the only issue to be addressed herein is whether petitioner has sustained her burden of proof (Tax Law § 689[e]) to show that she generated \$11,300.00 of earned income during the 2002 tax year from her activities as a self-employed home health aide.

C. In the instant matter, petitioner has failed to meet her burden of proof to show that she had \$11,300.00 of earned income from her activities as a self-employed home health aide. In my view, petitioner did not produce sufficient books, records, receipts and documents to clearly show that she conducted business as a self-employed individual during the 2002 tax year. Even if it were found that petitioner was engaged in business as a self-employed individual, the evidence presented does not support how much was earned from the business and what expenses were incurred. The photocopy of the Schedule of Accounts Receivable does not appear to be a contemporaneously maintained document, and its reliability and accuracy are immediately brought into question with the alteration made to the September 11, 2002 entry so as to make the document consistent with the one check submitted in evidence. Petitioner's testimony and the statements from Ms. Guarino and Mr. Strong are, without credible corroborating documentary evidence, simply not sufficient to sustain her burden of proof.

D. The petition of Raj L. Defreitas is denied and the Division's Notice of Disallowance dated October 10, 2003 is hereby sustained.

DATED: Troy, New York
April 6, 2006

/s/ James Hoefer
PRESIDING OFFICER